Supreme Court, U. S.
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No. —77-1376

In the Supreme Court of the United States

OCTOBER TERM, 1977

UNITED STATES OF AMERICA, APPELLANT

v.

STATE OF GEORGIA, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA

JURISDICTIONAL STATEMENT

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JURISDICTIONAL STATEMENT

OPINION BELOW

The opinion of the district court (App., *infra*, pp. 5A–13A) is not reported.

JURISDICTION

The three-judge district court entered an order on September 30, 1977, (App., *infra*, pp. 3A–4A) denying the declaratory and injunctive relief sought by the United States under Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. (Supp. V) 1973c, and dismissing the action. The United States filed a notice of appeal (App., *infra*, p. 2A) on November 28, 1977.

On January 18, 1978, Mr. Justice Powell extended the time to docket the appeal until March 28, 1978 (App., *infra*, p. 1A). The jurisdiction of this Court rests on 42 U.S.C. (Supp. V) 1973c and 28 U.S.C. 1253. *Allen* v. *State Board of Elections*, 393 U.S. 544, 560–563; *Perkins* v. *Matthews*, 400 U.S. 379.

QUESTION PRESENTED

Whether Georgia's statewide mandatory majority vote and numbered post requirements for primaries and elections of county governing bodies has been submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act.

STATUTES INVOLVED

1. Section 5 of the Voting Rights Act of 1965, 79 Stat. 439, as amended, 42 U.S.C. (Supp. V) 1973c, provides, in relevant part:

> Whenever a State or political subdivision with respect to which the prohibitions set forth in section 4(a) based upon determinations made under the first sentence of section 4(b) are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1964, * * * such State or subdivision may institute an action in the United States District Court for the District of Columbia for a declaratory judgment that such qualification, prerequisite, standard, practice, or procedure does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color, or in contravention of the guarantees set forth in section 4(f)(2), and unless and until the court enters such judgment no person shall be denied the right to vote for failure to comply with such qualification, prerequisite, standard, practice, or procedure: *Provided,* That such qualification, prerequisite, standard, practice, or procedure may be enforced without such proceeding if the qualification, prerequisite, standard, practice, or procedure has been submitted by the chief legal officer or other appropriate official of such State or subdivision to the Attorney General and the Attorney General has not interposed an objection within sixty days after such submission, or upon good cause shown, to facilitate an expedited approval within sixty days after such submission, the Attorney General has affirmatively indicated that such objection will not be made. * * * Any action under this section shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of title 28 of the United States Code and any appeal shall lie to the Supreme Court.

2. Section 4(a) and (b) of the Voting Rights Act of 1965, 79 Stat. 438, as amended, 42 U.S.C. (Supp. V) 1973b (a) and (b), provide, in relevant part:

> (a) To assure that the right of citizens of the United States to vote is not denied or abridged on account of race or color, no citizen shall be denied the right to vote in any Federal, State, or local election because of his failure to comply with any test or device in any State with respect to which the determinations have been made under the first two

sentences of subsection (b) or in any political subdivision with respect to which such determinations have been made as a separate unit, unless the United States District Court for the District of Columbia in an action for a declaratory judgment brought by such State or subdivision against the United States has determined that no such test or device has been used during the seventeen years preceding the filing of the action for the purpose or with the effect of denying or abridging the right to vote on account of race or color * * *

* * * * *

(b) The provisions of subsection (a) shall apply in any State or in any political subdivision of a State which (1) the Attorney General determines maintained on November 1, 1964, any test or device, and with respect to which (2) the Director of the Census determines that less than 50 per centum of the persons of voting age residing therein were registered on November 1, 1964, or that less than 50 per centum of such persons voted in the presidential election of November 1964. * * *

3. Section 12(d) and (f) of the Voting Rights Act of 1965, 79 Stat. 444, 42 U.S.C. 1973j(d) and (f), provide:

(d) Whenever any person has engaged or there are reasonable grounds to believe that any person is about to engage in any act or practice prohibited by section 2, 3, 4, 5, 7, 10, 11, or subsection (b) of this section, the Attorney General may institute for the United States, or in the name of the United States, an action for preventive relief, including an application for a temporary or permanent injunction, restraining order, or other order, and including an order directed to the State and State or local election officials to require them (1) to permit persons listed under this Act to vote and (2) to count such votes.

(f) The district courts of the United States shall have jurisdiction of proceedings instituted pursuant to this section and shall exercise the same without regard to whether a person asserting rights under the provisions of this Act shall have exhausted any administrative or other remedies that may be provided by law.

STATEMENT

1. Section 5 of the Voting Rights Act, as amended, 42 U.S.C. (Supp. V) 1973c, bars a state or political subdivision covered by Section 4(a) and the first sentence of Section 4(b) of the Act from carrying into effect "any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1964," without first obtaining the approval of the Attorney General or of the United States District Court for the District of Columbia. The State of Georgia is covered by the relevant provisions of Section 4 of the Voting Rights Act and is subject to Section 5's "preclearance" requirements. 30 Fed. Reg. 9897 (1965); see 411 U.S. 526, 528, n. 1.

In June 1964 the Georgia General Assembly passed, and the Governor signed into law, Act 26 (1964),

which revised the State Election Code. Section 34–1002 of the Act required candidates seeking federal, state or county offices in any primary or election to designate the specific office or post which they were seeking if there were two or more offices, each having the same title, to be filled at the same election by the vote of the same electors. Section 34–1514 of the Act required that candidates in primaries and elections be elected by majority vote. But there was an exception for county elections. Sections 34–1002 and 34–1514 each contained a provision stating that the section shall not apply to candidates seeking party nomination for or election to the governing authority of a county during the year 1964, and such candidates shall be governed by the county executive committee rules in such primaries and in accordance with any local act establishing such governing authority in the case of an election. It was stipulated that "[i]n at least eleven (11) counties in the State of Georgia in 1964 candidates for county commissions were nominated prior to November 1, 1964, and elected after November 1, 1964, by plurality vote and without numbered posts."

Neither the State of Georgia nor any of the counties implementing the provisions of Act 26 sought or obtained preclearance from the District Court for the District of Columbia or the Attorney General for implementing the new numbered post and majority vote requirements.

2. Four submissions to the Attorney General by the State of Georgia between 1968 and 1971 contained the

text of enactments that included numbered post and majority vote provisions identical to those in Act 26. In each instance, Georgia identified the changes it was submitting to the Attorney General, but did not indicate that the numbered post or majority vote provisions were changes from previous Georgia law, or that these procedures were being submitted for his review under Section 5 of the Voting Rights Act.

(a) In 1968, Georgia submitted to the Attorney General "acts adopted at the 1965 and 1966 sessions of the Georgia General Assembly * * *." In a twenty-one page memorandum, Georgia identified the submitted changes. The numbered post and majority vote provisions enacted in 1964 are not identified as changes or even mentioned in the memorandum, although they were embodied in the revised Georgia Election Code, attached to the submission as Exhibit B. The Assistant Attorney General's letter, dated June 27, 1968, to Georgia officials states that he has reviewed the "changes in the Georgia Election Code enacted by the 1965 and 1966 Sessions * * * [and] the Attorney General will not interpose an objection to any of the subject enacted changes."

(b) In June 1969, Georgia submitted to the Attorney General changes adopted in 1968 to the State Constitutions and changes enacted by the 1969 General Assembly to the State Code. In its twenty-three page memorandum identifying the submitted changes, Georgia did not identify either the numbered post or majority vote provisions as changes in Georgia law. The memorandum does not mention the numbered

post provision at all. In discussing amendments to Section 34–1514 relating to run-off elections, the memorandum says that the majority vote requirement is not a change: "Under Georgia law at present, no candidate, with certain stated exceptions not here relevant, can be nominated to public office unless ~~unless~~ he receives a majority of the votes cast in the primary or the election." The Assistant Attorney General wrote to Georgia officials stating that the Attorney General would not "interpose any objection to the enactments submitted by your letter of June 3, 1969."

(c) In March 1970, Georgia submitted to the Attorney General H. B. 1304, Act 1079, enacted by the 1970 session of the General Assembly. The State's submission letter to the Attorney General says:

> The purpose of the Bill is to place the conduct of political primaries under the supervision of the elected county and State officials. * * * The Bill revises the Election Code in all respects to reflect this intention, together with certain other minor housekeeping changes which are self-explanatory.

Act 1079 (H. B. 1304), which was attached to the submission letter, placed the majority vote and numbered posts provisions under different code numbers,[1] but again there was no indication that these provisions were being submitted for preclearance or that they were changes from the pre-November 1964 law. In his

[1] The numbered post provision, formerly Section 34–1002, became Section 34–1015. The majority vote requirement, formerly Section 34–1514, became Section 34–1513.

letter of May 22, 1970, to Georgia officials, the Assistant Attorney General stated that the Attorney General "will not at this time interpose an objection to the enactment or implementation of House Bill 1304."

(d) In April 1971, Georgia submitted to the Attorney General three acts and one resolution passed by the 1971 Session of the General Assembly. Neither the acts nor the resolution affected or changed the numbered posts provision of the Georgia Code. One of the acts, Act 543, modified the procedures for run-off elections, but neither the act nor the submission indicates that the majority vote requirement was a change from the pre-November 1964 law. The Assistant Attorney General wrote to Georgia officials on July 2, 1971, stating that the Attorney General would not interpose an objection to the submitted legislation.

3. In April 1972, the Georgia legislature enacted special legislation (Act No. 1359) authorizing Harris County, after a local referendum, to increase the membership of its Board of Commissioners from three to five. In September, after a favorable referendum, the change was submitted to the Attorney General under Section 5. The Assistant Attorney General responded in December. Although he made no objection to the increase in the number of commissioners, he did interpose an objection, in the name of the Attorney General, to the numbered post requirement included in the Act, noting that this rule, "coupled with the majority vote requirement under Georgia law, may well have the effect of diluting or minimizing the vot-

ing strength of blacks." This was done on the misapprehension that the numbered post rule was now, for the first time, being applied in Harris County.

Subsequently, it was represented that the numbered post system had been used in previous Harris County elections and was not a change. In light of this new information, which was construed as indicating that the numbered post requirement had applied to the county since 1964,[2] the Assistant Attorney General, by letter dated March 30, 1973 (App., *infra*, pp. 14A–15A), withdrew the previous objection. Erroneously, this letter also represents that the requirement had been cleared by the Attorney General in 1970.

4. On September 17, 1976, the Attorney General filed suit, on behalf of the United States, against the State of Georgia and state officials[3] seeking a declaration that the implementation of the changes in election procedures to majority vote and numbered post requirements in primaries and elections for county commissions without satisfying the preclearance pro-

[2] In fact, the representation was that the Harris County elections of *1966* and *1970* had been conducted under the numbered post system, albeit it was also said that this requirement had "been the law in Georgia since 1964." Presumably, there was no Harris County election between 1962 and 1966, and it is not possible to determine whether, had there been a 1964 election, the County would have taken advantage of the exemption in the June 1964 statute. In the circumstances, we believe Harris County must be treated as having obtained clearance, if it was needed.

[3] In addition to the State, defendants are the Governor, the Secretary of State, members of the State Board of Elections, the State Democratic Executive Committee, and its Chairperson, and the State Republican Executive Committee, and its Chairperson.

visions of Section 5 violates the Voting Rights Act, and an injunction prohibiting defendants from further implementing those changes until the preclearance requirements have been satisfied.

The three-judge district court, on cross motions for summary judgment, ordered that the action be dismissed. The court held that the changes to numbered posts and majority vote for primaries and elections of county commissions were subject to the preclearance requirements of Section 5, but that these requirements were satisfied by Georgia's submissions to the Attorney General between 1968 and 1971.[4]

THE QUESTION IS SUBSTANTIAL

1. It is of course settled that Section 5 of the Voting Rights Act reaches a change of the kind involved here—a shift from a system in which candidates for a multi-member government body elected at large need not designate the particular seat they are running for and are elected by plurality vote, to one requiring specification of a numbered post and election by majority vote. *Georgia* v. *United States*, 411 U.S. 526. See, also, *Allen* v. *State Board of Elections*, 393 U.S. 544; *Perkins* v. *Matthews*, 400 U.S. 379. And it is equally clear (as the district court ruled) that, in determining whether a "practice or procedure" is "different from that in force or effect on November 1,

[4] The district court held that the State had submitted its entire election code to the Attorney General in 1970 and that his failure to object at that time satisfied the requirements of Section 5, relying in part on the Assistant Attorney General's letter of March 30, 1973, to Harris County officials (*supra*), which so stated.

1964," one compares the *actual* practice followed then and now, regardless of any change in law. *Perkins* v. *Matthews, supra.* Accordingly, here, where State law did not then require, and many counties admittedly did not in fact apply, the numbered post and majority vote rules in 1964, a subsequent application of those rules was a change requiring preclearance.[5]

It follows that the only question of substance presented here is whether the Attorney General's failure to object to the submissions made in 1968, 1969, 1970 and 1971, combined with the 1973 letter to a Harris County official, amounts to an effective preclearance of the change. We submit the district court wrongly resolved this issue.

2. We believe the answer is now ruled by the Court's decision—unanimous on this point—in *United States* v. *Sheffield Board of Comm'rs,* No. 76-1662, decided March 6, 1978. It is there held that the Attorney General's inaction cannot be deemed clearance, even though he is put on notice, if the proposed change is "neither properly submitted" to him for approval nor "in fact evaluated by him." Slip op. at 25. Indeed, this is no more than an application of the principle already announced in *Allen, supra,* 393 U.S. at 571, that the State must submit the change "in some unambiguous

[5] The suggestion that the provisions of the 1964 Act — which required counties to follow the new rules for elections after 1964 — were repealed, thereby mooting our challenge, is, as the district court found, wholly frivolous. First, as we have noted, it is the change in practice, not the change in law, that matters. Moreover, as the court observed, the same requirements were carried over in the 1970 Election Code, albeit with new section numbers. See note 1, *supra*, p. 8.

and recordable manner." Thus, here, since Georgia never asked the Attorney General to clear the numbered post and majority vote requirements and he never purported to approve them, it is irrelevant whether he might have noticed the change for himself by a detailed examination of the enactments submitted to him for other purposes.[6]

Moreover, the Attorney General was not clearly put on notice of the proposed change by any of the State's submissions. Only the 1968 submission even reproduced the original provisions of the June 1964 law that temporarily exempted counties from the new numbered post and majority vote requirements. And, even if the Attorney General had noticed those provisions—which were not tendered to him for approval—he would not have known which counties had in fact followed the new procedures in 1964, as they were free, though not yet compelled, to do.

As for the 1970 submission—relied upon by the district court—it nowhere indicates that such a change had occurred. By then, the temporary exemption of counties from the numbered post and majority vote rules had been deleted as spent. The most detailed study of the new Election Code would not have alerted the Attorney General that these requirements were new—as, indeed, they were not in 1970. He relied,

[6] As the Court noted in *Sheffield Board of Comm'rs*, *supra*, slip op. 25 n. 26, 26-27, there are today regulations governing the form of submissions which make it clear that they must "clearly set forth" the new rule with "[a]n explanation of the difference between the submitted change affecting voting and the existing law or practice * * *." 28 C.F.R. 51.5, 51.10(a)(4).

as he must, on the State's representations as to what changes of substance had been made by the new Code.

3. Nor was the Court justified in relying on the letter of March 30, 1973, from the Assistant Attorney General to the Harris County Ordinary. To be sure, that letter recites that the new Georgia Election Code "was submitted to the Attorney General in 1970" and "no objection was interposed," implying that the section which required numbered posts had then been approved *sub silentio*. That was, of course, an error, since that provision had not in fact been submitted for consideration and could not, on the face of the Code, have been seen to be a change. But the letter also, and primarily, withdraws the objection previously interposed to the use of numbered posts on the ground that the requirement had "been in effect for county-wide elections * * * since 1964" and that "Harris County ha[d] been holding its elections [under that rule] since 1964." See App., *infra*, p. 14A. Plainly, if those representations were correct,[7] there had been no relevant change in Harris County that called Section 5 into play and the Assistant Attorney General's withdrawal of objection was correct.

At all events, the partial mistake by the Assistant Attorney General cannot bar vindication of the public interest. See, *e.g.*, *Automobile Club* v. *Commissioner*, 353 U.S. 180; *United States* v. *San Francisco*, 310 U.S. 16, 31–32; *Utah Power & Light Co.* v. *United States*, 243 U.S. 389, 409. There is no showing

[7] See note 2, *supra*, p. 10.

that the State of Georgia, or any county other than Harris County, relied on the 1973 letter. In these circumstances, it would be quite wrong, we submit, to treat a secondary reason given in a clearance decision affecting a single county as preventing implementation of Section 5 of the Voting Rights Act for the entire State.[8]

4. We pursue the case because it involves a change in voting procedures which has a serious potential for racial discrimination. See *White* v. *Regester*, 412 U.S. 755, 765–766. Indeed, the Department of Justice has objected to statewide numbered post or majority vote provisions in Louisiana, Mississippi and North Carolina, and to nineteen such changes in Georgia itself with respect to governmental units not covered by the 1964 statute involved here. It would be anomalous to waive a similar objection in the case of counties—at least eleven in number—where the matter remains open to challenge.

To be sure, as the district court noted, it is late in the day to be questioning a practice that has been effective for many years. But the lion's share of that delay cannot be attributed to the Department of Justice. The fact is that the State did not submit the

[8] The court also cited *Pitts* v. *Cates*, 536 F. 2d 56 (C.A. 5), as evidence that the majority vote provision had been precleared by the Attorney General. It is true that the opinion in that case mentions, without discussion, that this requirement had been precleared by the Attorney General in 1970, but the United States was not a party to that case and had no opportunity to correct the error. Here, the mistake in the 1973 letter *was* brought to the court's attention.

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change for approval, no doubt under the misapprehension that because it was ordained by a statute enacted before November 1964 it might escape scrutiny. That was, perhaps, an arguable view before this Court's decision in *Perkins* v. *Matthews, supra,* 400 U.S. at 394–395. But we note that, except for Harris County, no submission has been made since that decision was handed down in January 1971. On this record, it ill behooves Georgia to complain that the government has been dilatory. And, in any event, the right of citizens to be free from potential voting discrimination cannot be sacrificed to considerations of laches.

CONCLUSION

For the foregoing reasons, we believe the judgment of the district court should be reversed. It may be, however, that plenary consideration is unnecessary, especially in light of this Court's intervening decision in *United States* v. *Sheffield Board of Comm'rs, supra.* In our view, the decision below is so plainly erroneous as to justify summary reversal.

Respectfully submitted.

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MARCH 1978.

APPENDIX

Supreme Court of the United States

No. A–606

UNITED STATES, APPELLANT,

v.

GEORGIA

ORDER

UPON CONSIDERATION of the application of counsel for the appellant,

IT IS ORDERED that the time for docketing an appeal in the above-entitled cause be, and the same is hereby, extended to and including March 28, 1978.

/s/ Lewis F. Powell, Jr.,
LEWIS F. POWELL, JR.,
Associate Justice of the Supreme Court of the United States.

Dated this 18th day of January, 1978.

In the United States District Court for the Northern District of Georgia, Atlanta Division

(Civil Action No. C76-1531A)

UNITED STATES OF AMERICA

v.

THE STATE OF GEORGIA, GEORGE BUSBEE, BEN FORTSON, Jr., SHIRLEY ALTMAN, D. B. HOWE, Sr., OSCAR PERSONS AND M. M. "MUGGSY" SMITH, MEMBERS OF THE STATE ELECTION BOARD; THE STATE DEMOCRATIC EXECUTIVE COMMITTEE, MARG THURMAN, CHAIRPERSON AND THE STATE REPUBLICAN EXECUTIVE COMMITTEE, MACK MATTINGLY, CHAIRPERSON

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that the United States of America, the plaintiff named above, appeals to the Supreme Court of the United States from the final order and judgment dismissing the complaint entered in this action on September 30, 1977.

This appeal is taken pursuant to 28 U.S.C. § 1253.

WILLIAM L. HARPER,
United States Attorney,
428 U.S. Courthouse,
Atlanta, Georgia 30303.

In the United States District Court for the Northern District of Georgia, Atlanta Division

(Civil Action No. C76-1531A)

UNITED STATES OF AMERICA

vs.

THE STATE OF GEORGIA, GEORGE BUSBEE, BEN FORTSON, Jr., SHIRLEY ALTMAN, D. B. HOWE, Sr., OSCAR PERSONS AND M. M. "MUGGSY" SMITH, MEMBERS OF THE STATE ELECTION BOARD; THE STATE DEMOCRATIC EXECUTIVE COMMITTEE, MARG THURMAN, CHAIRPERSON AND THE STATE REPUBLICAN EXECUTIVE COMMITTEE, MACK MATTINGLY, CHAIRPERSON

JUDGMENT

This action came on for consideration before the Court, Honorable James C. Hill, United States Circuit Judge, Honorable Charles A. Moye, Jr., United States District Judge and Honorable William C. O'Kelley, United States District Judge, and the issues having been duly rendered,

In the United States District Court for the Northern District of Georgia, Atlanta Division

(Civil No. C76-1531A)

UNITED STATES OF AMERICA

vs.

THE STATE OF GEORGIA, ET AL.

Before HILL, Circuit Judge; MOYE and O'KELLEY, District Judges.

(5A)

IT IS ORDERED AND ADJUDGED that plaintiff take nothing, that the action be dismissed and that defendants THE STATE OF GEORGIA, GEORGE BUSBEE, BEN W. FORTSON, JR., SHIRLEY ALTMAN, D. B. HOWE, SR., OSCAR PERSONS and M. M. "MUGGSY" SMITH, THE STATE DEMOCRATIC EXECUTIVE COMMITTEE, MARG THURMAN, Chairperson and THE STATE REPUBLICAN EXECUTIVE COMMITTEE, MACK MATTINGLY, Chairperson recover of the plaintiff UNITED STATES OF AMERICA, their costs of action.

Dated at Atlanta, Georgia, this 30th day of September, 1977.

Filed and entered in Clerk's Office this 30th day of Sept., 1977.

BEN H. CARTER, *Clerk.*
By: PATSY L. DANIELS,
Deputy Clerk.

BEN H. CARTER,
Clerk of Court.
By: PATSY L. DANIELS,
Deputy Clerk.

(4A)

ORDER

Per Curiam

This civil action is before the court on defendants' motion to dismiss or, in the alternative, for summary judgment and on plaintiff's motion for summary judgment. The United States Justice Department on September 17, 1976, filed an action in this court seeking an order requiring the State to submit two provisions of the Georgia Election Code of 1964 to the Attorney General of the United States for clearance pursuant to the Voting Rights Act of 1965, 42 U.S.C. § 1971 *et seq.* The case was submitted to a three-judge panel, which determined that ruling should be postponed until after the general election and that a ruling should be made based on cross motions for summary judgment. The case was set down for oral argument on April 28, 1977, and heard by the court at that time.

In the spring of 1964, the Georgia General Assembly in an extraordinary session completely revised the Georgia Election Code. The resulting bill, Act. No. 26, Ga. Laws 1964, p. 26 (Ga. Code Ann. 34–101 *et seq.*), was signed by the governor on June 24, 1964. The new election code provided at § 34–1002 that candidates seeking one of two or more public offices, each having the same title and to be filled at the same election by vote of the same electors, would have to designate which specific office and post they were seeking within a given district. At § 34–1514 the new code provided that a majority vote was required to nominate or elect in all elections within the purview of the election code. These two provisions contained a sentence which *excluded* candidates for election to the governing authority of a county from the requirement of designating a post and district and from the requirement of majority vote for the year 1964.

The Voting Rights Act of 1965, 42 U.S.C. § 1971 *et seq.* became effective in August, 1965. The Act provided that in certain states and political subdivisions any change in the voting standard, function, or procedure after November, 1964, must be cleared by approval of the District Court for the District of Columbia or the Attorney General of the United States prior to its being put into effect. Georgia is a state covered by the Act. In the case *sub judice,* the Justice Department contends that the provisions in question, former Ga. Code Ann. § 34–1002 and former Ga. Code Ann. § 34–1514, were subject to the preclearance provisions of the Voting Rights Act of 1965 in that they constituted a change in voting procedure within the meaning of the Act. This reasoning is based on the argument that since these provisions of the Georgia Election Code did not go into effect until after November, 1964, they are subject to the Act even though the Georgia Election Code of which they are a part was enacted *prior to* the Voting Rights Act. The United States requests that the court declare that implementation of the changes to majority vote and designated posts in primaries and elections for county governing bodies violates section 5 of the Voting Rights Act of 1965 and that the court enjoin defendants from implementing the changes until the requirements of section 5 have been satisfied.

The State's motion to dismiss or, in the alternative, for summary judgment is based upon three main arguments: (1) that the voting practices complained of were in force prior to November 1, 1964, and, consequently, not required to be submitted to the District Court for the District of Columbia or the Attorney

General of the United States for approval prior to implementation; (2) that the provisions complained of have been repealed; and (3) that the provisions complained of were, in fact, properly submitted and approved by the Attorney General.

The argument that the provisions at issue did not constitute changes within the meaning of the Voting Rights Act in that they were part of an election code enacted prior to the passage of the Voting Rights Act has been dealt with by the Supreme Court of the United States in *Perkins* v. *Matthews,* 400 U.S. 379 (1971), in a slightly different factual setting. In *Perkins* the appellants, voters and candidates for city office, sought to enjoin the 1969 city election in Canton, Mississippi, on the grounds that changes in election procedure and certain boundary changes since November, 1964, had not been precleared. Among the changes complained of was a change from election by ward to at-large election of aldermen. As the Court noted, the question of a change in this instance arose in a "peculiar context." The change had been enacted by a Mississippi statute of 1962 but had been *ignored* by the city in the election of 1965. The Court found that a belated implementation of the at-large election of aldermen requirement in the 1969 election would constitute a change within the meaning of the Voting Rights Act of 1965:

> We have concluded, nevertheless, that the change to at-large elections required federal scrutiny under § 5. That section in express terms reaches any standard, practice, or procedure "different from that in force or effect on November 1, 1964." In our view, § 5's reference to the procedure "in force or effect on November 1, 1964," must be taken to mean the procedure that would have been followed if the election had been held on that date.

Id. at 394. It seems clear that if the Court found implementation of an election provision in effect prior to November 1, 1964, to constitute a change requiring preclearance under the Voting Rights Act, a change in election procedure passed prior to the Act but effective after the Act would constitute a change within the meaning of the Act. Consequently, the State's argument that no preclearance was necessary for the complained of sections must fail.

The State's second argument is that the provisions complained of have been repealed and are no longer in effect. The State contends that § 34–1002 of the 1964 election code was stricken in 1970 by Ga. Laws 1970, pp. 347, 354, and § 34–1514 was stricken by Ga. Laws 1969, pp. 292, 293. While an examination of the pages cited in the laws of 1969 and 1970 reveals that the sections complained of have indeed been amended and, in fact, have section numbers different from the numbers assigned these provisions in the 1964 election code, the fact remains that in *substance* there has been no change in the requirement that candidates seeking party nomination for or election to the governing authority of a county shall be elected by a majority vote and shall, in case of a candidate seeking one of two or more public offices each having the same title and to be filled at the same election by the vote of the same electors, designate the specific office sought. *See* Ga. Laws 1964 at 174–75; Ga. Laws 1969 at 306–07; Ga. Laws 1970 at 380–31; Ga. Laws 1971 at 603–04 to trace the development of § 34-1514. *See* Ga. Laws 1964 at 80; Ga. Laws 1970 at 369 to trace the development of § 34–1002. Inasmuch as the changes complained of—the post-November 1, 1964, application of majority vote and designated office to candidates for nomination or election to the governing authority of a county—are still in effect, the State's

argument that the sections complained of have been repealed must fail.

The State's final argument on behalf of its motion for summary judgment is that there has been no violation of section 5 of the Voting Rights Act of 1965 inasmuch as the complained of sections have, in fact, been precleared by the Attorney General of the United States. The reasoning behind this argument is that since after implementation of the change in voting procedure complained of the Attorney General had occasion to consider the election code of Georgia in 1968, 1969, 1970, and 1971, he could have discovered that the complained of provisions had taken effect with regard to candidates for governing office of a county after November 1, 1964. Since the Attorney General *could have* discovered the change and objected to it, the State concludes that the fact that he did not object signifies that the change was approved. Central to the question of whether the provisions complained of have, in fact, been precleared is a determination of what constitutes a "submission" of a change within the meaning of the Voting Rights Act of 1965. Prior to September, 1971, there were no regulations specifying the proper manner in which a submission should be made. However, in *Allen* v. *State Board of Elections*, 393 U.S. 544 (1969), the Supreme Court discussed the meaning of a "submission" as follows:

> While the Attorney General has not required any formal procedure, we do not think the Act contemplates that a "submission" occurs when the Attorney General merely becomes aware of the legislation, no matter in what manner. Nor do we think the service of the briefs on the Attorney General constituted a "submission." A fair interpretation of the Act requires that

> the State in some unambiguous and recordable manner submit any legislation or regulation directly to the Attorney General with a request for his consideration pursuant to the Act.

Id. at 571.

The entire election code of Georgia has been before the Attorney General on four occasions since 1965: in 1968, 1969, 1970, and 1971. The State argues that the Attorney General's access to the entire election code, which contained the changes complained of, but without their being specifically pointed out, constituted an effective submission of these provisions. The State relies upon the 1970 submission as particularly compelling. In 1970 the State requested review of the entire election code, which had been revised to place political primaries under the supervision of elected county and state officials. The language of this 1970 submission is interesting: "The Bill revises the Election Code in all respects to reflect this intention, together with certain other minor housekeeping changes which are self-explanatory." This clearly indicates that the election code should be reviewed in its entirety.

In the absence of any requirement that a specific submission procedure be followed, this court finds that the submission of the entire election code of Georgia to the Attorney General with the request that he consider any changes constituted a submission of the matter to the Attorney General in an unambiguous and recordable manner as required by *Allen*. That the Attorney General was, in fact, aware of and had no objections to the two provisions complained of is strongly indicated by a letter which was not brought to the court's attention prior to the oral hearing. In this letter of March 30, 1973, designated as exhibit G

of stipulations of fact, Stanley Pottinger, Assistant Attorney General, Civil Rights Division, assured the Ordinary of Harris County that the designated post requirement specified in § 34–1015 of the Georgia Election Code, which was identical to former § 34–1002 of the 1964 Election Code, had been submitted to the Attorney General in 1970 and that no objection had been interposed. That the majority vote provision had also been precleared is indicated by the decision of the United States Court of Appeals for the Fifth Circuit in *Pitts* v. *Cates*, 536 F. 2d 56 (5th Cir. 1976), in which it is clear that the court considered that provision as precleared by the Justice Department in 1970. Thus, there is evidence of general acceptance of the fact that both of the provisions complained of were in fact precleared in 1970.

Although arguments of waiver and estoppel have been abandoned by the State, the court is constrained to note that the Attorney General's delay of eleven years in bringing an action for declaratory and injunctive relief to force the State to submit the complained of provisions to a preclearance procedure is inexcusable and, if allowed, would have placed the electoral system of the state of Georgia in an uproar on the eve of a general election. For the Justice Department to attack provisions of the Georgia Election Code which have been in effect for eleven years on the sole basis that said provisions have not been precleared and with no allegations that these provisions are in any manner violative of the letter or the spirit of the fifteenth amendment to the United States Constitution borders on the absurd.

Judgment shall be entered for the defendants.

IT IS SO ORDERED this 30th day of September, 1977.

JAMES C. HILL,
United States Circuit Judge.
CHARLES A. MOYE, JR.,
United States District Judge.
WILLIAM C. O'KELLEY,
United States District Judge.

March 30, 1973.

Mr. ROY MOULTRIE,
Ordinary, Harris County,
Hamilton, Georgia 31311

DEAR MR. MOULTRIE: Reference is made to our letter of December 5, 1972 interposing an objection on behalf of the Attorney General to the creation of a residential post requirement for county commissioner elections under Section 2 of Georgia Act 1359 submitted by you pursuant to Section 5 of the Voting Rights Act of 1965, as amended.

On February 1, 1973 we received a letter from Mr. William B. Steis, an attorney acting on behalf of Harris County, stating that a designated post requirement has been in effect for county-wide elections in the State of Georgia since 1964 as specified in § 34–1015 of the Georgia Election Code, and that Harris County has been holding its elections pursuant to that act since 1964. Our subsequent examination of this situation indicates that this statute was submitted to the Attorney General in 1970 pursuant to Section 5 of the Voting Rights Act of 1965 and no objection was interposed.

Viewed in this light it appears that the only change effected by Section 2 of Act 1359 is from a county-wide residency requirement to a district residency requirement. Under these circumstances, and based upon our evaluation of the change contained in Section 2 of Act 1359, the objection to that section interposed by our letter of December 5, 1972 is hereby withdrawn.

We feel a responsibility, however, to point out that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of the plan.

Sincerely,

/s/ J. Stanley Pottinger,
J. STANLEY POTTINGER,
Assistant Attorney General,
Civil Rights Division.

U.S. GOVERNMENT PRINTING OFFICE: 1973

Supreme Court, U. S.
FILED
MAY 1 1978
MICHAEL RODAK, JR., CLER

IN THE

Supreme Court of the United States

October Term, 1977

NO. 77-1376

UNITED STATES OF AMERICA,
Appellant,

v.

STATE OF GEORGIA, et al.,
Appellees.

On Appeal from the United States District Court For the Northern District of Georgia

MOTION OF STATE OF GEORGIA TO AFFIRM

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April, 1978

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---

MOTION OF STATE OF GEORGIA TO AFFIRM

Now come the State of Georgia, the Governor of Georgia, the Secretary of State of Georgia, and the members of the State Election Board and move the Court to affirm the decision sought to be reviewed on the ground that it is manifest that the questions on which the decision of the cause depends are so insubstantial, and the decision below is so obviously correct, as to not need further argument.

QUESTIONS PRESENTED

The United States has presented only one question to the Court:

1. Whether Georgia's state-wide mandatory majority vote and numbered post requirements for primaries

and elections of county governing bodies has [sic] been submitted to the Attorney General pursuant to §5 of the Voting Rights Act of 1965.

However, this appeal raises a second question:

2. Whether after an Attorney General, acting pursuant to §5 of the Voting Rights Act, advised the State of Georgia in 1970 that he had no objection to the "enactment or implementation" of a State election law, a different Attorney General, six years later, may repudiate the preclearance of his predecessor and now require yet another submission under §5 by merely alleging that the predecessor Attorney General did not properly interpret what was submitted to him.

ARGUMENT

I. THE VOTING PROCEDURES WHICH THE ATTORNEY GENERAL SEEKS TO HAVE SUBMITTED HAVE ALREADY BEEN SUBMITTED AND APPROVED BY ONE OF HIS PREDECESSORS.

The United States appears to be attempting in this action to secure from the judiciary approval to reconsider each and every submission by states under the Voting Rights Act made prior to the promulgation by the Department of Justice of 28 C.F.R. Part 51. Such an attempt to expand a power already recognized as constituting an extraordinary change in our federal system must not be approved.

In 1964 the Georgia General Assembly completely rewrote this State's election laws by enacting Act 26 [Ga. Laws 1964, p. 26, Ex. Sess.; the Georgia Election Code, Ga. Code 34-101, *et seq.*]. Among other things, Act 26 standardized a number of heretofore different approaches

to election procedures in state-wide and county elections. Included in the uniform concept were requirements that candidates must be elected by a majority vote and that if there are two or more offices with the same title being filled at the same election by the same voters, candidates must designate specifically which office they are seeking (post designation). Act 26 was effective and in use prior to November 1, 1964; however, for the elections of county commissioners, majority vote and post designation did not become effective until January 1, 1965 (former Ga. Code §34-1514 and §34-1002).

As the United States points out on pages 6-7 of its Jurisdictional Statement, Georgia made four submissions to the Attorney General pursuant to §5 of the Voting Rights Act between 1968 and 1971 which contained the text of enactments that included post designation or majority vote procedures, or both, identical to those in Act 26. However, the United States failed to point out that the 1968 submission also included Act 26 itself, together with an explanation that it was a complete revision so that the Attorney General would be aware of the exact language of the 1964 revision as it might relate to the later enactments.

Even if the 1968 submission did not properly place the majority vote and post designation provisions before the Attorney General for review, formal and proper submissions made in 1969, 1970 and 1971 did precisely that. The most cogent evidence of this was the 1970 submission as a part of which both the majority vote and post designation provisions were submitted for preclearance and approved by the Assistant Attorney General in charge of the Civil Rights Division of the Justice Department, acting on behalf of the Attorney General. That submission

was of the *entire* 1970 act (HB 1304) which repealed the earlier post designation and majority vote sections of the Georgia Election Code and replaced them with new sections, designated as Ga. Code §§34-1015 and 34-1513 respectively. A copy of the response from the Assistant Attorney General was omitted from the Jurisdictional Statement but is attached to this motion as Appendix 1a. The Assistant Attorney General was absolutely clear that:

> "The Attorney General would not, at this time, interpose an objection *to the enactment or implementation* of House Bill 1304." [Emphasis Added].

Contrary to the present assertion of the United States, the approval was not for some nebulous limited purpose which could reasonably be construed as excluding the post designation and majority vote provisions. Rather, it clearly was an approval of HB 1304 in its entirety which must, by any logic, include all the provisions of that statute.

As will be pointed out later in this motion, until this action was brought in 1976, it was commonly accepted by everyone concerned, *including the Attorney General himself*, that the post designation and majority vote provisions of the Georgia law as they applied to county commission elections had been submitted to and approved by the Attorney General.[1] This factual question was fully explored by the three-judge district court and addressed in its decision (Jurisdictional Statement pp. 11A-12A).

---

[1] As is pointed out in the *1978* report of the Attorney General (Appendix 3a), he *still* reports that he approved the post designation and majority vote provisions of HB 1304.

A. THE 1970 GEORGIA SUBMISSION MET THE REQUIREMENTS OF THE VOTING RIGHTS ACT AS IT HAD BEEN INTERPRETED AT THAT TIME.

The Voting Rights Act prohibits any state or political subdivision from enacting or seeking to administer any voting requirement different from that in force or effect on November 1, 1964, without first securing from the United States District Court for the District of Columbia a declaratory judgment that such requirement does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color, or in contravention of certain other guarantees set forth in the Act. 42 U.S.C. §1973c. A state or political subdivision is permitted by the Act, however, to pursue an alternative course of action before administering a new voting requirement. This alternative course is submission of the new requirement to the Attorney General for his consideration. *Id.* It is the finality *vel non* of this consideration by the Attorney General that is the subject matter of this litigation.

In 1970 the Justice Department had not yet established regulations concerning the form of submissions under the Voting Rights Act (hereinafter the "Act"). The only standards were those set forth in the Act as interpreted by this Court in *Allen v. State Board of Elections*, 393 U.S. 544 (1969).[2]

---

[2] During the period 1965-1970, there were only a total of approximately 600 submissions, or an average of 120 each year. [Footnote 8 to the dissent by Mr. Justice Stevens in *United States v. Sheffield Board of Commissioners*, No. 76-1662, 46 L.W. 4189 (March 6, 1968)]. Presumably, the Justice Department reviewed each of these submissions carefully.

The United States argues that the State of Georgia should have anticipated in 1970 what procedures the Attorney General would establish in 1971 and then have followed the yet to be developed procedures by specifically pointing out in the 1970 submission the changes made by HB 1304. The United States further argues that the failure of the State of Georgia to point out all relevant provisions in HB 1304 is absolute proof that the then Attorney General did not consider and preclear the post designation and majority vote provisions. The United States not only ignores all the evidence to the contrary, but it also mistakenly interprets the 1970 submission requirements established by the law and *Allen*.

The Act (§5) expressly requires nothing more than that "the qualification, prerequisite, standard, practice or procedure" be submitted. In *Allen*, this Court, in rejecting arguments that an adequate submission occurred when the Attorney General became aware of a state enactment by virtue of being served with briefs in which such enactments were referenced, held that a fair interpretation of the Act requires only the following:

(a) A submission must be made directly to the Attorney General,

(b) The legislation or other change must be submitted in a clear and unambiguous manner, and

(c) The Attorney General must be requested to consider the new legislation pursuant to the Act. *Id.* at 571.

There is absolutely nothing in the *Allen* decision, and there were not yet any clarifying regulations when the challenged 1970 submission was made by Georgia, which required a state to point out to the Justice Department

what the differences were between the old practice and the new law. The requirement in 1970 was that Georgia submit the new practice or procedure in an unambiguous manner. What can be more unambiguous than a new law itself?

B. THE ATTORNEY GENERAL APPROVED THE POST DESIGNATION AND MAJORITY VOTE PROVISIONS OF THE 1970 SUBMISSION.

The United States alleges error by the three-judge district court in its factual determination that a submission of the post designation and majority vote provisions was made by Georgia pursuant to §5 and tosses aside, as "an error" and a "partial mistake," the acknowledgment by the Attorney General in 1973 that he had approved post designation in 1970. (Jurisdictional Statement, p. 14).

There was ample evidence before the district court to support its finding and decision that the submission was approved by the Attorney General. First, of course, is the fact that the 1970 submission stated:

> "The Bill [HB 1304] revises the Election Code in all respects to reflect this intention, together with certain other minor housekeeping changes which are self-explanatory."
>
> (Jurisdictional Statement, 11A). [Bracketed Matter Added].

The response of the Attorney General was:

> "The Attorney General will not at this time interpose an objection to the enactment or implementation of HB 1304." (Appendix 1a to this Motion).

Even if this exchange of submission and response in 1970 left some doubt as to its breadth, the Attorney

General himself interpreted the extent of his approval of the State's submission when in 1973 he stated:

> "Our subsequent examination of this situation indicates that this statute [as it related to post designation] was submitted to the Attorney General in 1970 pursuant to §5 of the Voting Rights Act of 1965, and no objection was interposed." (Jurisdictional Statement, p. 14A). [Bracketed Matter Added].

While clearly the United States wishes that that letter was not written (since it is now characterized as an "error"), it was in fact written and did in fact evidence the conclusion of the Attorney General as to the extent of Georgia's 1970 submission.

Further, both the District Court for the Northern District of Georgia and the Fifth Circuit Court of Appeals have relied upon the Attorney General's approval of the majority vote features in HB 1304. Such reliance is evidenced in recent litigation concerning election of Fulton County Commissioners. *See Pitts v. Busbee*, 511 F.2d 126 (5th Cir. 1975) and *Pitts v. Cates*, 536 F.2d 56 (5th Cir. 1976). While these decisions are not res judacata as to the United States, they are further evidence of the general acceptance over the years of the 1970 preclearance of post designation and majority vote by the Justice Department.

Finally, and perhaps most telling is the position of the United States since its Jurisdictional Statement was filed. In an entirely unrelated matter, Georgia requested from the Attorney General a list of all submissions made by the State of Georgia since the enactment of the Voting Rights Act and the action taken on those submissions by the Attorney General. Such a list was prepared by the Attorney General on March 28, 1978, and received by the

State of Georgia on April 20, 1978. That list, *provided by the current Attorney General after he filed his Jurisdictional Statement in this case* (in which he denied approval was ever given in 1970 to post designation and majority vote) states that *approval for these two election devices was given on May 22, 1970. See* Appendix 3a to this Motion.[3]

The position being advocated by the United States in this appeal is contrary to its own public record. Is this another "error" and "partial mistake" which both this Court and Georgia are supposed to ignore? Is not the State of Georgia entitled to assume that preclearance is final at some point in time?

C. THE *SHEFFIELD* DECISION OF THIS COURT IS NOT APPLICABLE OR CONTROLLING IN THE CASE AT BAR.

In its Jurisdictional Statement, the United States erroneously argues that the recent decision of this Court in *United States v. Sheffield Board of Commissioners*, No. 76-1662, 46 L.W. 4189 (March 6, 1978), is dispositive of this case. (Jurisdictional Statement, pp. 12, 16). The factual background in *Sheffield* is totally inapposite.

In the first place, any submissions in *Sheffield* were pursuant to the regulations of the Attorney General (28 C.F.R. Part 51). The United States, on page 13 of its Jurisdictional Statement, points out the fact the Court noted in *Sheffield* that "there are *today* regulations governing the form of submissions which make it clear that [submissions] must 'clearly set forth' the new rule. . . ."

The regulations, which played such an important part in *Sheffield*, had not yet been promulgated at the time of Georgia's 1970 submission.[4] Rather, Georgia had no

[3] This information is included pursuant to Rule 16(5) of this Court since it is new matter not earlier available.

[4] The regulations governing the form and specific requirements of a submission were not published until September 10, 1971, long after the submissions at issue here. (36 F.R. 18186).

guidance as to the form of the submission except the very general language of the Act and the interpretation of that language by this Court in *Allen v. State Board of Elections, supra.* It is incredible that an Attorney General should, six years after a submission, seek to apply retroactively the requirements of regulations promulgated one year after the submission in question.

Another relevant distinction between *Sheffield* and this case concerns the contemporaneous actions of the Attorney General. In *Sheffield*, only the referendum was submitted to the Attorney General for preclearance. He then specifically advised the city that he was approving only the referendum and not the proposed change to the mayor-council form of government. He specifically warned the city a further submission would be required and further advised it of the information it must submit before he could preclear. When the city failed to do so, he *promptly* brought an action pursuant to §5 of the Voting Rights Act.

Compare those facts with the situation in this case. In 1970, HB 1304 in its entirety, including post designation and majority vote, was submitted to the Attorney General, who gave preclearance to the *entire statute*. He did not seek further information and did not advise or warn Georgia that any further actions or submissions were necessary. Then, he issued an interpretation in 1973 and documentation in 1978 reflecting that he had, in fact, approved those aspects of the Georgia election process which the United States claims need to be resubmitted. There is no evidence that the Attorney General did not intend to approve the change; rather, all of the evidence supports the finding of the district court that the Attorney General intended to approve the now disputed changes,

unsupported conclusions in the United States' Jurisdictional Statement as to a "partial mistake" to the contrary notwithstanding.

Thus, the factual basis for this Court's decision in *Sheffield* is lacking here, making that decision totally inapplicable to the case at bar.

II. ONCE THE ATTORNEY GENERAL HAS PRECLEARED A SUBMITTED STATE STATUTE, HIS SUCCESSORS MAY NOT, SIX YEARS LATER, REPUDIATE THE PRECLEARANCE AND, UNDER §5, REQUIRE RESUBMISSION OF THAT STATUTE.

The United States seeks to repudiate the 1970 preclearance of HB 1304 by the Attorney General and his 1973 interpretation of that preclearance, classifying these actions as "errors" and "partial mistakes." Presumably, it will do likewise as to the April 10, 1978, documentation. It claims that the preclearance should be repudiated since "partial mistakes" "cannot bar vindication of public interest."

Such a cavalier approach by the United States ignores the unique responsibilities placed on the Attorney General by the Voting Rights Act and, unfortunately, bears out possible concerns previously expressed by this Court in 1972 that there may well be unwarranted administrative conduct by the Attorney General in frivolously interfering with laws of vital concern to the states covered by the Voting Rights Act. *Georgia v. United States*, 411 U.S. 526, 541; 36 L.Ed.2d 472, 485 (1972).

As this Court has repeatedly held, the purpose of the provision in §5 permitting a submission to the Attorney

General in lieu of bringing a declaratory judgment action in the District Court of the District of Columbia is to provide a speedy mechanism by which a state can implement election changes. This result obtains from the requirement that the Attorney General act within sixty days of the submission. *Allen v. State Board of Elections, supra; Georgia v. United States, supra; United States v. Sheffield, supra.*

If the United States were permitted to prevail in this action, the "speedy" method of Attorney General approval would be totally emasculated. Not one single submission to the Attorney General which has heretofore been made or which might in the future be "approved" by the Attorney General will be safe from future challenge by him. The Attorney General will merely have to state that a particular submission approval was "in error" or a "partial mistake" as the United States has attempted to characterize approval of the post designation and majority vote features of the 1970 submission.

Georgia would agree that, under normal circumstances, administrative decisions by public officials which are an incorrect interpretation of the law will not preclude an action to vindicate a public interest. Georgia has no quarrel whatsoever with the rules laid down by this Court in such cases as the *Automobile Club v. Commissioner*, 353 U.S. 180 (1957); *United States v. San Francisco*, 310 U.S. 16 (1939); and, *Utah Power and Light Company v. United States*, 243 U.S. 389 (1916).

However, the United States now asks this Court to render a decision which would have the effect of eliminating the finality of a preclearance by the Attorney General. It would have this Court permit an Attorney General at any time to declare that a preclearance by a previous

Attorney General was an "error" or a "partial mistake" and to require the state or political subdivision to make a new submission.

Such a ruling by the Court would create havoc. Since 1970, when the submission at issue was precleared during the term of Attorney General John Mitchell, there have been six different persons holding the office of Attorney General. Their policies, practices, and even philosophies as to the approach to insure the proper enforcement and implementation of the Voting Rights Act, as well as other federal non-discriminatory statutes, have varied. This is, of course, a fact of political life.

It is not pure speculation that election practices or procedures approved by one Attorney General might later fall into disfavor during the term of another Attorney General. It was not the intent of Congress that each Attorney General could review all election procedures precleared by his predecessors and require a resubmission of those procedures which he does not believe to be appropriate. If an election practice or procedure has the effect of violating the constitutional rights of the citizens of that jurisdiction, procedures have long been available to enjoin that unconstitutional provision. A resubmission under §5 is not required.

As Mr. Justice Stevens pointed out in his dissent in *Sheffield:*

> "This so-called 'preclearance' requirement is one of the most extraordinary remedial provisions in the Act noted for its broad remedies. Even the Department of Justice has described it as a 'substantial departure . . . from ordinary concepts of our federal system.' " (*Sheffield, supra* at 4197).

The authority of the Attorney General in that "substantial departure" must be narrowly construed. Once an election device has been precleared, as was the entire Georgia 1970 statute, and certainly after the Attorney General not once, but twice (1973 and 1978) states he has precleared the disputed provisions, another Attorney General (or another division of the Department of Justice) cannot take it upon himself to repudiate that preclearance.

CONCLUSION

The State of Georgia has been using majority vote and post designation as part of its election procedure for all elected offices, including the election of county commissioners, for years.

The State was under the belief that these procedures had been precleared. The Attorney General was under the belief that these procedures had been precleared. The decisions of a United States District Court and the Fifth Circuit Court of Appeals illustrate the federal courts were under the belief that these procedures had been precleared. Even the records of the Attorney General continue to state as of this date that these procedures have been precleared.

The district court decided that preclearance had been obtained, and pointed out that the eleven year delay of the Justice Department in bringing this action is inexcusable and would place the electoral system of the State in an uproar.

As that court said, this action by the Justice Department "borders on the absurd" (Jurisdictional Statement, p. 12A).

They were absolutely correct, and this Motion to Affirm their decision should be granted.

Respectfully submitted,

ARTHUR K. BOLTON
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MICHAEL J. BOWERS
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DON A. LANGHAM
First Assistant Attorney General
132 State Judicial Building
Atlanta, Georgia 30334
Telephone: (404) 656-3392

April, 1978

APPENDIX

Department of Justice
Washington

MAY - 1970

Honorable Arthur K. Bolton
Attorney General
State of Georgia
132 State Judicial Building
Atlanta, Georgia 30334

Dear Mr. Attorney General:

This is in reference to the submission of House Bill 1304 to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965. The submission was received at this Department March 24, 1970.

The Attorney General will not at this time interpose an objection to the enactment or implementation of House Bill 1304. However, please be aware that the failure to object does not bar any future legal action to enjoin enforcement of the changes.

Sincerely,

JERRIS LEONARD
Assistant Attorney General
Civil Rights Division

UNITED STATES DEPARTMENT OF JUSTICE

WASHINGTON, D.C. 20530

Address Reply to the
Division Indicated
and Refer to Initials and Number
DSD:DHH:JAS:bmp
DJ 166-012-3

APR 18 1978

Mr. Michael J. Bowers
Senior Assistant Attorney General
State of Georgia
The Department of Law
132 State Judicial Building
Atlanta, Georgia 30334

Dear Mr. Bowers:

Pursuant to your letter of March 27, 1978 and telephone conversation with the undersigned on March 24, 1978, we are enclosing for your information a copy of our most recent public computer printout for the State of Georgia.

As you requested we did not include the list of submissions by political subdivisions of the State of Georgia concerning local changes in voting matters.

Sincerely,

DREW S. DAYS III
Assistant Attorney General
Civil Rights Division

By: David H. Hunter
DAVID H. HUNTER
Attorney, Voting Section

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INDEX OF SECTION 5 SUBMISSIONS AS OF 03/28/78
BY LOCATION AND DATE

STATE OF GEORGIA

SUB.	COUNTY	CITY	TYPE OF CHANGE	DESCRIPTION	ACT	YEAR	STATUS	RESUBM.	LITIGATION	RECEIVED	NOTIFIED
V3677			REDIST	STATE SENATE			OBJECTION			01/06/72	03/03/72
V3678			REDIST	GEORGIA HOUSE			OBJECTION			01/06/72	03/03/72
S1491			LAW	ELECTION BD RULE	RULES	1970	NO OBJECTN			01/20/70	03/13/70
V6178			LAW	CAND QUAL METHOD	ACT 757	1974	NO OBJECTN			02/06/74	02/28/74
V6179			LAW	NOM PETITION	ACT 757	1974	NO OBJECTN			02/06/74	02/28/74
V6180			LAW	REDUCE FEES-CAND	ACT 757	1974	NO OBJECTN			02/06/74	02/28/74
V6181			LAW	PETIT CIRCULATOR	ACT 757	1974	NO OBJECTN			02/06/74	02/28/74
X2550			LAW	STATE ELECT BOAR			NO OBJECTN			02/09/76	04/09/76
V6217			REDIST	STATE HOUSE	ACT 769	1974	NO OBJECTN			02/26/74	05/13/74
A0226			LAW	CONSTIT AMENDMEN	HR-493-	1913	NO OBJECTN			03/08/77	05/05/77
V4065			REDIST	STATE SENATE	HB 2085	1972	NO OBJECTN			03/15/72	04/11/72
V4066			REDIST	STATE HOUSE	SB 690	1972	OBJECTION		DJ PENDING	03/15/72	03/24/72
V4067			REDIST	CONGRESSIONAL	HB 1862	1972	NO OBJECTN			03/15/72	04/11/72
T7938			LAW	FILING FEES	HB 1304	1970	NO OBJECTN			03/24/70	05/22/70
T7939			LAW	CONDUCT PRIMARY	HB 1304	1970	NO OBJECTN		PVT-DECIDE	03/24/70	05/22/70
T7940			LAW	CONDUCT CONVENTN	HB 1304	1970	NO OBJECTN			03/24/70	05/22/70
T7941			LAW	ABSENTEE BALLOTS	HB 1304	1970	NO OBJECTN			03/24/70	05/22/70
T7942			LAW	CAND QUALIFICATN	HB 1304	1970	NO OBJECTN			03/24/70	05/22/70
T7943			LAW	NUMBERED POSTS	HB 1304	1970	NO OBJECTN			03/24/70	05/22/70
T7944			LAW	MAJORITY REQUIRE	HB 1304	1970	NO OBJECTN			03/24/70	05/22/70
S1512			LAW	BALLOT COUNTNG	ACT 537	1965	NO OBJECTN			03/25/68	06/27/68
S1513			LAW	TEMP ELECTN DATE	ACT 103	1965	NO OBJECTN			03/25/68	06/27/68
S1514			LAW	PETITION DATE	ACT 118	1965	NO OBJECTN			03/25/68	06/27/68
S1515			LAW	BALLOT FORMAT	ACT 120	1965	NO OBJECTN			03/25/68	06/27/67
S1516			LAW	OVERVOTING	ACT 120	1965	NO OBJECTN			03/25/68	06/27/68
S1517			LAW	FILING DATE/G.A.	ACT 296	1965	NO OBJECTN			03/25/68	06/27/68
S1518			LAW	SPECIAL ELE/G.A.	ACT 1	1965	NO OBJECTN			03/25/68	06/27/68
S1519			LAW	ABSENTEE VOTING	ACT 60	1965	NO OBJECTN			03/25/68	06/27/68
S1520			LAW	WRITE-IN NOTICE	RES 104	1965	NO OBJECTN			03/25/68	06/27/68
S1521			LAW	ABOL AT-LRG/SEN	ACT 574	1966	NO OBJECTN		PVT-DECIDE	03/25/68	06/27/68
S1522			LAW	QUALIF DATES	ACT 556	1966	NO OBJECTN			03/25/68	06/27/68
S1523			LAW	ELECT SUPRIOR CT	RES 47	1966	NO OBJECTN			03/25/68	06/27/68

STATE OF GEORGIA

SUB.	COUNTY	CITY	TYPE OF CHANGE	DESCRIPTION	ACT	YEAR	STATUS	RESUBM.	LITIGATION	RECEIVED	NOTIFIED
S1524			LAW	ELECT SG	RES 109	1966	NO OBJECTN			03/25/68	06/27/68
S1525			LAW	RESIDENCY	RES 113	1966	NO OBJECTN			03/25/68	06/27/68
X5387				SUPPLY BALLOTS	963-	1976	NO OBJECTN			03/25/76	03/31/76
X5388			LAW	ELECTION DATE	954-	1976	NO OBJECTN			03/25/76	03/31/76
T6802			LAW	GA VACANCY	ACT 777	1970	NO OBJECTN			04/10/70	06/09/70
T6803			LAW	MAJORITY REQ	ACT1077	1970	NO OBJECTN			04/10/70	06/09/70
T6804			LAW	HOME RULE	ACT1078	1970	NO OBJECTN			04/10/70	06/09/70
T6805			LAW	RESIDENCY	ACT1080	1970	NO OBJECTN			04/10/70	06/09/70
X6384			LAW	STATE ACTS			NO OBJECTN			04/22/76	06/21/76
X7011			LAW	RECOUNT BALLOT	817-	1976	NO OBJECTN			04/22/76	06/21/76
X7012			LAW	REG PROCEDURE	948-	1976	NO OBJECTN			04/22/76	06/21/76
X7013				VOT MACHINE	949-	1976	NO OBJECTN			04/22/76	06/21/76
X7014			LAW	CANDIDATE QUAL	952-	1976	NO OBJECTN			04/22/76	06/21/76
S1441			LAW	ELECTN BD SIZE	ACT 992	1968	NO OBJECTN			04/23/68	06/19/68
S1442			LAW	DEFINE POL PARTY	ACT 992	1968	NO OBJECTN			04/23/68	06/19/68
S1443			LAW	PROHIB WRITE-INS	ACT 997	1968	NO OBJECTN			04/23/68	06/19/68
S1444			LAW	ASSISTANCE	ACT 997	1968	OBJECTION			04/23/68	06/19/68
S1472			LAW	PRESIDENTL VOTE	ACT 988	1968	NO OBJECTN			04/23/68	06/19/68
S1473			LAW	NOM PETITION	ACT 997	1968	NO OBJECTN			04/23/68	06/19/68
S1474			LAW	MODFD STR TICKET	ACT 987	1968	NO OBJECTN			04/23/68	06/19/68
S1475			LAW	CAMPGN LITERATUR	ACT 985	1968	NO OBJECTN			04/23/68	06/19/68
S1476			LAW	RESIDENCY	ACT 986	1968	NO OBJECTN			04/23/68	06/19/68
S1477			LAW	REGISTER STUDENT	ACT 676	1968	NO OBJECTN			04/23/68	06/19/68
S1478			LAW	PRECINCT SIZE	ACT 990	1968	NO OBJECTN			04/23/68	06/19/68
S1479			LAW	CONVENTION DATES	ACT 989	1968	NO OBJECTN			04/23/68	06/19/68
S1480			LAW	INCUMBENT QUALIF	ACT 983	1968	NO OBJECTN			04/23/68	06/19/68
S1481			LAW	PRES ELECTOR PET	ACT 698	1968	NO OBJECTN			04/23/68	06/19/68
S1482			LAW	PLURALITY/PRES	ACT 698	1968	NO OBJECTN			04/23/68	06/19/68
S1483			LAW	NOMINATION CONV	ACT 993	1968	NO OBJECTN			04/23/68	06/19/68
S1484			LAW	FILING FEES	ACT 994	1968	NO OBJECTN			04/23/68	06/19/68
S1485			LAW	VOTE RECORDERS	ACT 991	1968	NO OBJECTN			04/23/68	06/19/68
S1486			LAW	RUN-OFF/GOVERNOR	ACT 137	1968	NO OBJECTN			04/23/68	06/19/68

S1487		LAW	SUCCESSION	ACT 133	1968	NO OBJECTN			04/23/68	06/19/68
S1488		LAW	RUN-OFF/ST OFF	ACT 136	1968	NO OBJECTN			04/23/68	06/19/68
S1489		LAW	TERMS/GEN ASSY	ACT 140	1968	NO OBJECTN			04/23/68	06/19/68
S1490		LAW	TERMS/NO CHANGE	ACT 994	1968	NO OBJECTN			04/23/68	06/19/68
V6423		LAW	ABSENTEE BALLOT	ACT 770	1974	NO OBJECTN			04/23/74	06/20/74
V6424		LAW	BALLOT FOR MILIT	ACT 770	1974	NO OBJECTN			04/23/74	06/20/74
V6425		LAW	OATH FOR BALLOT	ACT 770	1974	NO OBJECTN			04/23/74	06/20/74

V6426		LAW	NO DOCTOR CERT	ACT 770	1974	NO OBJECTN			04/23/74	06/20/74
V6427		LAW	PENALITIES-INFO	ACT 770	1974	NO OBJECTN			04/23/74	06/20/74
V6428		LAW	DISABLED-ASSIST	ACT 770	1974	NO OBJECTN			04/23/74	06/20/74
V6429		LAW	AMENDS CODE-T 34	ACT 770	1974	NO OBJECTN			04/23/74	06/20/74
T7945		LAW	REGIS IN HI SCLS	ACT 141	1971	NO OBJECTN			05/03/71	07/02/71
T7946		LAW	DATES	ACT 543	1971	NO OBJECTN			05/03/71	07/02/71
T7947		LAW	WITHDRAWAL	ACT 543	1971	NO OBJECTN			05/03/71	07/02/71
T7948		LAW	ELECTION BOARD	ACT 543	1971	NO OBJECTN			05/03/71	07/02/71
T7950		LAW	DURATIONAL RESCY	RES 22	1971	NO OBJECTN			05/03/71	07/02/71
A0901		LAW	CANDIDATE REQ	ACT-7-	1977	NO OBJECTN			05/09/77	07/08/77
A0902		LAW	CANDIDACY REQ	178-	1977	NO OBJECTN			05/09/77	07/08/77
A0903		LAW	BALLOT LABELS	671-	1977	NO OBJEDTN			05/09/77	07/08/77
A0946		LAW	REG VOTER MAJORI	ACT-21-	1977	NO OBJECTN			05/10/77	07/11/77
A0947		LAW	TERMS COUNCIL	ACT-50-	1977	NO OBJECTN			05/10/77	07/11/77
A0960		LAW	RECALL PROVISION	ACT-51-	1977	NO OBJECTN			05/10/77	07/11/77
A0948		LAW	SOLICITING VOTES	ACT -8-	1977	NO OBJECTN			05/12/77	07/11/77
A0949		LAW	SUPERIOR COURT J	11-	1977	NO OBJECTN			05/12/77	07/11/77
A0950		LAW	SOLICITATION SIG	12-	1977	NO OBJECTN			05/12/77	07/11/77
A0951		LAW	VOTER CERTIFICAT	183-	1977	NO OBJECTN			05/12/77	07/11/77
A0952			ABSENTEE BALLOT	241-	1977	NO OBJECTN			05/12/77	07/11/77
A0953		LAW	ABSENTEE BAL APP	288-	1977	NO OBJECTN			05/12/77	07/11/77
A0954		LAW	SUPPLY ABSENTEE	289-	1977	NO OBJECTN			05/12/77	07/11/77
A0955		LAW	CHALLENGE TO ABS	308-	1977	NO OBJECTN			05/12/77	07/11/77
A0956		LAW	ELEC INFO CANDID	639-	1977	NO OBJECTN			05/12/77	07/11/77
A0957			VOTE MACHINES	672-	1977	NO OBJECTN			05/12/77	07/11/77
A0958		PRECNCT	ELEC DIST NOTIFI	673-	1977	NO OBJECTN			05/12/77	07/11/77
S1445		LAW	QUALIFICATN TEST	ACT 998	1968	OBJECTION			05/15/68	07/11/68
S1446		LAW	ASSISTANCE	ACT 998	1968	OBJECTION			05/15/68	07/11/68
S1447		LAW	QUALIF/POLL OFF	ACT 998	1968	OBJECTION			05/15/68	07/11/68
S1448		LAW	REGISTRTN PERIOD	ACT 998	1968	NO OBJECTN			05/15/68	07/11/68

STATE OF GEORGIA

SUB.	COUNTY	CITY	TYPE OF CHANGE	DESCRIPTION	ACT	YEAR	STATUS	RESUBM.	LITIGATION	RECEIVED	NOTIFIED
S1449			LAW	WRITE-IN STICKER	ACT 998	1968	NO OBJECTN			05/15/68	07/11/68
S1450			LAW	MACHINE INSTRUCT	ACT 998	1968	NO OBJECTN			05/15/68	07/11/68
S1451			LAW	MUNICIPAL REGIS	ACT 993	1968	NO OBJECTN			05/15/68	07/11/68
V6517			LAW	CAMPAIGN FINANCE	ACT 803	1974	NO OBJECTN			05/16/74	06/27/74
V4453			LAW	CANDIDATE QUALIF	ACT 918	1972	NO OBJECTN			05/22/72	07/06/72
V4454			LAW	ALCOHOL REFEREND	ACT 865	1972	NO OBJECTN			05/22/72	07/06/72
V4455			LAW	CANDIDATE QUALIF	ACT1305	1972	NO OBJECTN			05/22/72	07/06/72
V4456			LAW	AID TO DRAW PCTS	ACT1015	1972	NO OBJECTN			05/22/72	07/06/72
V4457			LAW	SCL BD QUALIFINS	ACT 872	1972	NO OBJECTN			05/22/72	07/06/72
V4458			LAW	HOME RULE AMEND	ACT1268	1972	NO OBJECTN			05/22/72	07/06/72
V4459			LAW	PURGE THE DEAD	ACT1570	1972	NO OBJECTN			05/22/72	07/06/72
V4460			LAW	ALC ON ELECT DAY	ACT1233	1972	NO OBJECTN			05/22/72	07/06/72
V4461			LAW	ABOLSH TREASURER	RES 250	1972	NO OBJECTN			05/22/72	07/06/72
X6866			LAW	CAMPAIGN FINANCE	1363-	1976	NO OBJECTN			05/27/76	07/22/76
X6867			LAW	18 YRS OLD OFF	950-	1976	NO OBJECTN			05/27/76	07/22/76
X6869			LAW	ST ELEC BOARD			NO OBJECTN			05/27/76	07/16/76
X6870			LAW	ST ELEC BOARD			NO OBJECTN			05/27/76	07/16/76
X6871			LAW	ST ELEC BOARD			NO OBJECTN			05/27/76	07/16/76
V6561			LAW	VOTERS RESID REQ	ACT 772	1974	NO OBJECTN			05/28/74	07/22/74
V6562			LAW	PURGING VOTERS	ACT 772	1974	NO OBJECTN			05/28/74	07/22/74
V6563			LAW	PRIMARY DATE	ACT 916	1974	NO OBJECTN			05/28/74	07/22/74
V6564			LAW	AMEND MUN EL COD	ACT 771	1974	NO OBJECTN			05/28/74	07/22/74
V6565			LAW	ELECTORS LIST	ACT 771	1974	NO OBJECTN			05/28/74	07/22/74
V6566			LAW	PROHIBITS WRITEI	ACT 771	1974	NO OBJECTN			05/28/74	07/22/74
V6567			LAW	CAMPAIGN LIT	ACT 771	1974	NO OBJECTN			05/28/74	07/22/74
V6568			LAW	RES REQ-VOTERS	ACT 773	1974	NO OBJECTN			05/28/74	07/22/74
V6569			LAW	BALLOT CARDS	ACT 773	1974	NO OBJECTN			05/28/74	07/22/74
V6570			LAW	CANDIDACY NOTICE	ACT 993	1974	NO OBJECTN			05/28/74	07/22/74
S1455			LAW	RUN-OFF/GOVERNOR	ACT 137	1968	NO OBJECTN			06/06/69	06/23/70
S1456			LAW	RUN-OFF/ST OFF	ACT 136	1968	NO OBJECTN			06/06/69	08/05/69
S1457			LAW	SUCCESSION	ACT 133	1968	NO OBJECTN			06/06/69	08/05/69
S1458			LAW	VACANCY/CTY SUPT	ACT 220	1969	NO OBJECTN			06/06/69	08/05/69
S1459			LAW	VACANCY/ORDINARY	ACT 221	1969	NO OBJECTN			06/06/69	08/05/69

S1460			LAW	VACANCY/SURVEYOR	ACT 225	1969	NO OBJECTN			06/06/69	08/05/69
S1461			LAW	APPOINT CONSTABL	ACT 226	1969	NO OBJECTN			06/06/69	08/05/69
S1462			LAW	REMOVE TESTS	ACT 219	1969	NO OBJECTN			06/06/69	08/05/69
S1463			LAW	ABSENTEE, ETC	ACT 224	1969	NO OBJECTN			06/06/69	08/05/69
S1464			LAW	POLL WATCHERS	ACT 223	1969	NO OBJECTN			06/06/69	08/05/69
S1465			LAW	COUNTING BALLOTS	ACT 223	1969	NO OBJECTN			06/06/69	08/05/69
S1466			LAW	NON-PARTISAN/SPC	ACT 223	1969	NO OBJECTN			06/06/69	08/05/69
S1467			LAW	COUNT ABSENTEE	ACT 217	1969	NO OBJECTN			06/06/69	08/05/69

S1468			LAW	RECOUNT	ACT 222	1969	NO OBJECTN			06/06/69	08/05/69
S1469			LAW	RUN-OFF PROVISNS	ACT 222	1969	NO OBJECTN			06/06/69	08/05/69
S1470			LAW	CHANGE ADDRESS	ACT 224	1969	NO OBJECTN			06/06/69	08/05/69
S1471			LAW	INDEP FILNG DATE	ACT 224	1969	NO OBJECTN			06/06/69	08/05/69
S1452			LAW	ABOL PARTY PRMRY	ACT 218	1969	NO OBJECTN			06/11/69	08/11/69
S1453			LAW	ABSENTEE VOTE	ACT 230	1969	NO OBJECTN			06/11/69	08/11/69
S1454			LAW	STRAIGHT TICKET	ACT 230	1969	NO OBJECTN			06/11/69	08/11/69
A0565			LAW	BD OF ELECTIONS	692-	1977	NO OBJECTN			06/17/77	08/09/77
S1495			LAW	ASSISTANCE	ACT 399	1966	NO OBJECTN		PVT-DECIDE	06/27/66	/ /
A0926			LAW	BD OF ELECTIONS	ACT -4-	1977	NO OBJECTN			06/27/77	08/09/77
A0927			LAW	CANDIDATE DISCLO	741-	1977	NO OBJECTN			06/27/77	08/09/77
V8886			LAW		ACT 621	1975	NO OBJECTN			06/30/75	07/02/75
V8887			LAW		ACT 457	1975	NO OBJECTN			06/30/75	07/02/75
V8888			LAW		ACT 470	1975	NO OBJECTN			06/30/75	07/02/75
V8889			LAW		ACT 527	1975	NO OBJECTN			06/30/75	07/02/75
V8890			LAW		ACT 528	1975	NO OBJECTN			06/30/75	07/02/75
V8891			LAW		ACT 529	1975	NO OBJECTN			05/30/75	07/02/75
V8892			LAW		ACT 530	1975	NO OBJECTN			06/30/75	07/02/75
V8893			LAW		ACT 564	1975	NO OBJECTN			06/30/75	07/02/75
V8894			LAW		ACT 568	1975	NO OBJECTN			06/30/75	07/02/75
V8895			LAW		ACT 570	1975	NO OBJECTN			06/30/75	07/02/75
V8896			LAW		ACT 579	1975	NO OBJECTN			06/30/75	07/02/75
V8897			LAW		ACT 97	1973	NO OBJECTN			06/30/75	07/02/75
V8898			LAW		ACT 666	1975	NO OBJECTN			06/30/75	07/02/75
V8899			LAW		ACT 677	1975	NO OBJECTN			06/30/75	07/02/75
V8901			LAW	SP2	ACT 77	1973	NO OBJECTN			06/30/75	07/02/75
A1776			LAW	CTY OFFICIAL FEL	840-	1976	NO OBJECTN			07/15/77	09/16/77
A1769			LAW	QUAL GEN ASSEMBL	287-	1977	NO OBJECTN			07/19/77	09/16/77
A1770			LAW	QUAL SHERIFFS	660-	1977	NO OBJECTN			07/19/77	09/16/77
S1492			LAW	TESTS, DEVICES	RULES	1968	OBJECTION			08/22/68	08/30/68

STATE OF GEORGIA

SUB.	COUNTY	CITY	TYPE OF CHANGE	DESCRIPTION	ACT	YEAR	STATUS	RESUBM	LITIGATION	RECEIVED	NOTIFIED
S1496			LAW	CHECK FOR DUPLCT	RULES	1968	NO OBJECTN			08/22/68	08/30/68
S1497			LAW	CHG OF RESIDENCE	RULES	1968	NO OBJECTN			08/22/68	08/30/68
S1498			LAW	CHG OF DISTRICTS	RULES	1968	NO OBJECTN			08/22/68	08/30/68
S1499			LAW	VOTE RECORDERS	RULES	1968	NO OBJECTN			08/22/68	08/30/68
S1500			LAW	TABULATING CENTR	RULES	1968	NO OBJECTN			08/22/68	08/30/68
S1501			LAW	COMPUTER PROGRAM	RULES	1968	NO OBJECTN			08/22/68	08/30/68
S1502			LAW	BALLOT ENVELOPES	RULES	1968	NO OBJECTN			08/22/68	08/30/68
S1503			LAW	DEFECTIVE BALLOT	RULES	1968	NO OBJECTN			08/22/68	08/30/68
S1504			LAW	WRITE-IN BALLOTS	RULES	1968	NO OBJECTN			08/22/68	08/30/68
S1505			LAW	OBSERVERS	RULES	1968	NO OBJECTN			08/22/68	08/30/68
S1506			LAW	MARKING BALLOTS	RULES	1968	NO OBJECTN			08/22/68	08/30/68
S1507			LAW	ABSENTEE VOTING	RULES	1968	NO OBJECTN			08/22/68	08/30/68
S1508			LAW	ABSENTEE ENVELOP	RULES	1968	NO OBJECTN			08/22/68	08/30/68
V3625			LAW	COMPLY WITH VRA	ACT 14	1971	NO OBJECTN			10/19/71	12/17/71
X9081			LAW	STATE ACT			PENDING			11/23/76	/ /
V3679			REDIST	U.S. HOUSE			OBJECTION		PVT-DECIDE	12/14/71	02/11/72
X6955	APPLING		POLL PL	POLL PL			NO OBJECTN			06/11/76	07/08/76
V4797	APPLING		POLL PL				WITHDRAWN			09/18/72	10/20/72
V3149	ATKINSON	PEARSON	LAW	CITY CHARTER			NO OBJECTN			06/15/71	08/13/71
A4543	BACON		POLL PL	POLL PLACES			PENDING			02/14/78	/ /
A4544	BACON		POLL PL	POLL PLACES			PENDING			02/14/78	/ /
V7051	BACON		POLL PL				NO OBJECTN			10/25/74	11/29/74
X9964	BACON	ALMA	LAW	POSTS & MAJ REQ			PENDING			0 /0 /0	/ /
X9965	BACON	ALMA	LAW	TERMS			PENDING			0 /0 /0	/ /
V3624	BACON	ALMA	ANNEX				NO OBJECTN			10/19/71	12/17/71
V8617	BAKER		LAW	SPI VTG MACHINES			NO OBJECTN			07/31/75	09/12/75
A1917	BAKER		LAW	SCH BD VACANCY			NO OBJECTN			08/02/77	09/06/77
V6100	BALDWIN		POLL PL	105 & 115TH			NO OBJECTN			01/31/74	02/22/74
V6101	BALDWIN		PRECNCT	105 & 115TH			NO OBJECTN			01/31/74	02/22/74
X1711	BALDWIN		POLL PL	POLLING PL			NO OBJECTN			06/03/76	07/02/76
V4489	BALDWIN		POLL PL				NO OBJECTN			06/24/72	08/07/72
A1898	BALDWIN	MILLEDGEVI	ANNEX	ANNEX			PENDING			0 /0 /0	/ /
A1899	BALDWIN	MILLEDGEVI	ANNEX	ANNEX			PENDING			0 /0 /0	/ /
X2211	BANKS		POLL PL	BALDWIN			NO OBJECTN			02/02/76	03/18/76

Supreme Court, U. S.
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No. 77-1376

In the Supreme Court of the United States

OCTOBER TERM, 1977

UNITED STATES OF AMERICA, APPELLANT

v.

STATE OF GEORGIA, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION TO MOTION TO AFFIRM

WADE H. MCCREE, JR.,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

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This memorandum is in response to appellees' attempt to supplement the record in this case by attaching as an appendix to their Motion to Affirm (Motion 2a-8a) a letter and computer print-out sent to them by an attorney in the Department of Justice in connection with an unrelated matter.[1] They contend (Motion 9, n. 3) that this material is "new matter not earlier available" and therefore properly considered by this Court pursuant to Rule 16(5). In our view, it is questionable whether this

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[1]These materials were sent in response to a telephone call and letter from an Assistant Attorney General of Georgia who stated that he wanted to determine if any legislation subject to the Voting Rights Act had not been submitted to the Attorney General as required by the Act.

material is within the scope of Rule 16(5), which permits the filing of a supplemental brief to call the Court's attention to "new cases or legislation or other intervening matter not available at the time of his last filing."

The Department of Justice keeps a computerized index of Section 5 submissions, and had this list been requested during discovery it would have been provided to appellees. If appellees had then chosen to offer the list in evidence at trial, the United States would have been afforded the opportunity to explain how the list is compiled and what its significance is.

A year after Georgia's March 1970 submission to the Attorney General (see J.S. 8-9), the Department of Justice instituted its computerized index of Section 5 submissions. A paraprofessional was assigned in 1971 to go through the materials submitted since the Act's inception in 1965 and to record these previous submissions on the computer. Using his own judgment, the paraprofessional described the materials he found within each earlier submission so that a record could be kept on the computer.

In describing the Georgia submission of March 1970, he listed seven provisions he found within H.B. 1304. The numbered post and majority vote provisions were two of those provisions. He could not determine whether any or all of the seven provisions were in fact submitted to the Attorney General. From the materials in front of him, he could not determine whether these provisions were changes from the voting procedure in force and effect on November 1, 1964, and hence subject to the preclearance requirements of the Act. Moreover, as we stated in the Jurisdictional Statement (p. 13), it is irrelevant whether a member of the Attorney General's staff might have

noticed these provisions if Georgia never asked the Attorney General to clear them.

Had the paraprofessional looked at the Department's file, he would have discovered that the memoranda analyzing the November 1970 submission do not discuss either of these provisions. But it was not his job to analyze such materials. He was merely describing for computer records the materials he found within earlier submissions, not making a legal or administrative judgment of what voting procedures had been properly submitted to the Attorney General pursuant to Section 5.

The computerized index is only a part of the Department's effort to keep appropriate records of materials sent to the Attorney General and of his actions under Section 5. The Department maintains public files on each submission in addition to the index. Department personnel seeking information regarding past submissions are expected to look at the appropriate files as well as the index. In the past there has been no systematic method of correcting errors on the computer index, although consideration is being given now to ways to correct and improve the computer records.

For the reasons stated in the Jurisdictional Statement, the judgment of the district court should be reversed.

Respectfully submitted.

WADE H. MCCREE, JR.,
Solicitor General.

MAY 1978.

DOJ-1978-05